

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.4.2008

CORAM;

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.NO.6437 OF 1998
and WPMP No.9907 of 1998

R.Saroja

..Petitioner

vs

1.The Chairman
Tamil Nadu Electricity Board
300, Anna Salai
Madras

2.Managing Director
Kumbakonam Rural Electricity
Co-operative Society
Kumbakonam

3.The President
2, Sarabojirjapuram Village
Panjayat, Vettamangalam
Pandanallur Post 609 807

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of writ of Mandamus directing the respondents 1 to 3 to pay a sum of Rs.5,00,000/- with interest to the petitioner towards compensation apart from that any damages for causing death of her husband with Ramalingam due to electrocution with the gross negligent of the respondents are jointly and severally liable to pay the same to the petitioner.

for petitioner : Mr.M.Ravi
for respondents : Mr.A.Selvendran
(for R1)
Mr.K.Hidayathullah
(for R2)
No appearance-for R3

ORDER

The husband of the Writ Petitioner Ramalingam was an agriculturist owned 10 acres of land and the agricultural land belongs to the family is situated near the house of the petitioner at Melatheru, Vellamangalam, Pandanallur Post. Between the house of the petitioner and the agricultural land there is a pathway which crosses a channel called Vettaru drainage and the path is covered with very old, lengthy bamboos and other trees. There is a high voltage electric wire running on the road which usually causes high voltage electricity to be spread especially during rainy season and in spite of the same the authorities have not taken any steps. Earlier the supply of electricity was under the control of the second respondent, Kumbakonam Rural Electricity co-operative society, Kumbakonam.

2. (i) It is the case of the petitioner that the villagers have made many representations to cut down and clean the disturbance of bamboos and in spite of the same the 2nd respondent has not taken any steps at any point of time. On 19.10.1997 at 7.30 p.m, the petitioner's husband went to the agricultural land to remove the flood water from the land and he has not turned up till next morning. It was only the next day on 20.10.1997 at 6.00 a.m., one of the neighbours Mr.Mahendran came to the house of the petitioner and informed that the petitioner's husband died due to electrocution between the channels. On verification it was found that on 19.10.1997 at night an electric wire was cut down and flinged on the bank of water channel and the petitioner's husband while crossing the footpath was electrocuted and died on the same spot. On 20.10.1997 after the petitioner was informed about the death of her husband, the petitioner's son has given a complaint to the Pandanallur police station and thereafter the police officer took up investigation and the post-mortem was done in the Government hospital at Kumbakonam. The post-mortem certificate also reveals that the death might be due to electrocution. After the death of the husband, the petitioner has made many representations for payment of compensation since the death was caused solely due to the negligence of the respondent electricity Board in not maintaining the electric poles and the route of electric wires properly. It is the case of the petitioner that at the time of death of the petitioner's husband he was aged 45 years and the petitioner was aged 42 years. On the basis that the respondents who are bound to maintain the electric poles and wires properly have failed to perform their legal duty which resulted in the death of petitioner's husband, the petitioner has filed the

present writ petition for a direction against the respondents to pay compensation of Rs.5,00,000/-. The petitioner also has stated that her husband was earning an income of Rs.5,000/- per month being an agriculturist in the land belongs to the petitioner's family was measuring 10 acres. The petitioner has also filed a legal heirship certificate showing that apart from the petitioner, the deceased-husband of the petitioner-Ramalingam was having four sons and one daughter born through the petitioner and at the time of filing of the writ petition only one daughter got married.

(ii) In the counter affidavit the 1st respondent has not denied the electrocution and the consequential death of the petitioner's husband -Ramalingam. Equally, the 2nd respondent who has filed counter affidavit has also not denied about the accident. It is seen in the counter affidavit originally filed by the 1st respondent-Electricity Board dated 15.4.1999 that at the time of accident the area in which accident took place was not covered under the Tamil Nadu Electricity Board and administratively and technically it was under the control of the second respondent. Thereafter, the 2nd respondent in its counter affidavit dated 17.7.2006 and relying upon G.O.124 dated 27.6.1997 has informed that the 2nd respondent has been wound up and the 1st respondent has again taken over the control. The 1st respondent has also specifically admitted that by virtue of the subsequent G.O., the 1st respondent has stepped into the shoes of the 2nd respondent Society which is no more in existence. That apart, the only issue raised by the 1st respondent is that the petitioner should have approached the Civil Court which is an effective and appropriate forum for the purpose of deciding the quantum of compensation in view of the recent judgment rendered in CHAIRMAN, GRID CORPN. OF ORISSA LTD., v. SUKAMANI DAS (1999 (7) Supreme Court Cases 298)

3. Heard the learned counsel for the petitioner and the respondents and perused the records.

4. The contention raised on behalf of the 1st respondent is heavily by placing reliance on the judgment of the Supreme Court reported in 1999(7) SCC 298 wherein it was held that the fact relating to the proper maintenance of transmission lines and the snapping of wire where it is beyond the control of the Grid Corporation or due to unauthorised intervention of third parties or as to whether the deceased had not died in the manner stated in the Writ Petition requires factual appreciation and that cannot be settled under Article 226 of the Constitution of India on the basis of affidavits only. In that case the Grid Corporation of

Orissa against which the claim of compensation for the death caused to the deceased due to its negligence has been raised, the Grid Corporation has specifically denied the very accident apart from various other defects including that it was due to the intervention of the third parties the electric wire got snapped resulting in electrocution. While the High Court has granted compensation on the basis that it was the duty of Grid Corporation of Orissa to maintain electric lines in a proper manner and the non-maintenance would amount to negligence, the Supreme Court while reversing the said judgment has held that it was the specific case of the Grid Corporation of Orissa in their counter affidavit that because of the thunderbolt and lightning one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. It was also the specific case of the Grid Corporation of Orissa that the deceased died due to the lightning and not because of his contact with snapped live wire. It was on the basis of the factual situation the Apex Court has held that the High Court ought not to have granted compensation while exercising jurisdiction under Article 226 of the Constitution of India. In para 6 the Supreme Court has held as under:

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants." The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped

because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995."

5. In *NIRMALA THIRUNAVUKKARASU v. TAMIL NADU ELECTRICITY BOARD* (1997 L.W., 42) relying upon the maxim 'res ipsa loquitur' this Court has held that the usual plea of 'Act of God' or mechanical failure cannot be considered as a defence while deciding about the quantum of compensation to be decided. In such cases of negligence especially relating to electrocution it was held that in order to render justice to the parties, the general rules as to damages to be construed liberally and not with rigidity. The Courts should take into consideration not allowing a calamity to turn into a windfall and the amount of compensation should be decided only with reference to pecuniary loss not as a matter of solatium for the loss of son, daughter or wife etc. While elaborately discussing the law relating to Torts with reference to negligence S.A.Kader, J. in para 12 has held as follows:

"12.Issue No.4: As the deceased has died as a result of the negligence of the defendants, they are bound to pay compensation to the plaintiffs for the loss suffered by them. Now to the quantum of compensation. The amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution integrum. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be

considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependants, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss."

6. In yet another judgment of this Court rendered in D.MATSA GANDHI, D. V. TAMIL NADU SLUM CLEARANCE BOARD reported in 2000 (III) CTC page 24, P.SATHASIVAM, J., (as he then was) has held that in cases where there is denial of tortious liability the writ petitions cannot be maintained. However, when negligence per se is visible the same has to be construed as violation of right to life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India. In that case this Court has awarded an amount of Rs.75,000/- with interest at 12% per annum from the date of order. The operation portion of the judgment is as follows:

"10. In the course of argument it is brought to my notice the recent decision of the Hon'ble Supreme Court reported in Nath Bros., Exaim International Ltd., v. Best Roadways Ltd., 2000 (4) S.C.C. 553 and power of this Court under Article 226. Nodoubt, the Hon'ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

".... However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution." (Italics Supplied)

In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief prayed by the petitioner.

By judicial dictum as stated above, on the facts and circumstances of this case and in the circumstances that the factum of electrocution and the death of the petitioner's husband is not denied either by the 1st respondent or by the 2nd respondent, I am of the considered view that it is not proper at this point of time, especially, when the accident took place in the year 1997 and the Writ Petition was filed in the year 1998 and the same has been pending for the past 10 years to drive the parties to Civil Court. Such course will only cause further injury to the family of the deceased. The averment made by the petitioner in the Writ Petition is that the petitioner's husband was earning an amount of Rs.5,000/- per month by agricultural operation which is not denied in the counter affidavit. That apart, the age of the deceased at the time of his death in 1997 is stated as 45 years which is also reflected in the post-mortem certificate as well as in the first information report. The petitioner herself was aged 43 years at the time of accident and therefore, considering the pathetic situation that the deceased died leaving 5 children and by quantifying the amount of compensation with reference to pecuniary loss to the family, especially, to the petitioner who is the wife of the deceased, I am of the considered view that to meet the ends of justice the 1st respondent should be directed to pay the compensation of Rs.3,00,000/- with interest at the rate of 9% per annum from the date of filing of the Writ Petition till the date of realisation.

7. In view of the same, the Writ Petition stands allowed with the direction to the 1st respondent to pay compensation of Rs.3,00,000/- to the petitioner which shall be for the entire family consisting of the petitioner and her children, with interest at the rate of 9% from the date of death of the petitioner's husband, namely, 19.10.1997 till the date of payment. The first respondent shall compute and pay the same within a period of eight weeks from the date of receipt of the copy of the order.

8. No costs. Consequently, connected pending miscellaneous petition is disposed of.

sal

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Chairman
Tamil Nadu Electricity Board
300, Anna Salai
Madras

2.Managing Director
Kumbakonam Rural Electricity
Co-operative Society
Kumbakonam

3.The President
2, Sarabojirjapuram Village
Panjayat, Vettamangalam
Pandanallur Post 609 807

1 cc to Mr.A.Selvendran, Advocate, SR.22368

1 cc to Mr.M.Pari, Advocate, SR.21272

akr (co)

dv/28.4.

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WPMP No.9907 of 1998

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